

**In the**

**SUPREME COURT OF MISSOURI**

**En Banc**

**May Session, 2006**

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**Report of the Office of the Chief Disciplinary Counsel for the year  
2005 together with the Financial Report of the Treasurer of the  
Advisory Committee Fund for 2005**

**MARIDEE F. EDWARDS  
Chief Disciplinary Counsel**

IN THE  
SUPREME COURT OF MISSOURI  
EN BANC

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MAY SESSION, 2006

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REPORT OF THE OFFICE OF CHIEF DISCIPLINARY COUNSEL FOR  
THE YEAR 2005 TOGETHER WITH THE FINANCIAL REPORT OF  
THE TREASURER OF THE ADVISORY COMMITTEE FUND FOR  
2005

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To the Honorable Judges of The Court:

Comes now the Chief Disciplinary Counsel, and respectfully reports to the Court on matters concluded during calendar year 2005 or pending on December 31, 2005.

**I.**

**DISCIPLINARY ACTIONS BEFORE THE COURT**  
**In the calendar year 2005, the following disciplinary matters were**  
**before the Supreme Court**

<b>NAME</b>	<b>DISPOSITION</b>
<b>ADAMS, PHILIP EDWARD #41161</b> St. Louis, MO	Interim Suspension on 6/7/05 Disbarred 2/7/06
Information for Interim Suspension pursuant to Rule 5.24 filed June 2, 2005. Interim suspension by order of the Court on June 7, 2005.	
Rule 5.21-Motion for Final Discipline filed January 10, 2006. Disbarred on February 7, 2006.	

<b>BERKOWITZ, STUART R. #24804</b> St. Louis, MO	Public Reprimand on 8/30/05
Disciplinary Hearing Panel* Recommendations and Stipulation as to Facts filed July 15, 2005.	
Public reprimand by order of the Court on August 30, 2005.	

<b>SUPREME COURT #86342</b>	Dismissed 3/01/05 No Violation Found
DHP Decision and Record filed on October 7, 2004. Briefs filed and oral argument February 3, 2005.	
Dismissed by order of the Court on March 1, 2005.	

\* Disciplinary Hearing Panels shall be referred to as DHP throughout this report.

Record refers to the complete record of formal discipline proceedings. Often there are attorneys with the same or similar names. It is important to note the bar number of the individual.

NAME	DISPOSITION
<b>BRATTEN, STEVEN J. #30110</b> Jefferson City, MO	Suspended on 8/30/05
DHP Decision and Record filed on May 13, 2005. Informant's brief filed. Informant's Motion to Submit Without Further Process sustained by Court.	
Suspended by order of the Court with no application for reinstatement to be entertained by the Court for a period of one year from August 30, 2005.	

<b>BRAUN, MARC W. #33511</b> St. Louis, MO	Suspended on 11/14/05
Rule 5.21-Motion for Final Discipline filed November 4, 2005.	
Suspended by order of the Court with no leave to apply for reinstatement for a period of three years from November 14, 2005.	

<b>BUCHLI, RICHARD I. #30533</b> Kansas City, MO	Interim Suspension on 10/09/02 Disbarred on 2/8/05
Rule 5.21 – Motion for Final Discipline filed on February 4, 2005.	
Disbarred by order of the Court on February 8, 2005.	

<b>CANTONWINE, STEVEN R. #36388</b> St. Louis, MO	Public Reprimand on 3/1/05
Joint Motion; Stipulation of Facts, Conclusion & Recommendation filed on January 20, 2005.	
Public reprimand by order of the Court on March 1, 2005.	

NAME	DISPOSITION
<b>COAN, KEVIN T. #47216</b> St. Louis, MO	Interim Suspension on 11/23/04 Disbarred on 3/2/05  Rule 5.21-Motion for Interim Suspension filed on October 22, 2004. Interim suspension granted on November 23, 2004, until final disposition of criminal proceeding in Illinois.  Disbarred by order of the Court on March 2, 2005.

<b>COWAN, WILLIAM R. #47302</b> Raytown, MO	Suspended with Probation on 10/26/04 Probation Revoked & Suspension on 8/30/05  Suspended by order of the Court on October 26, 2004 after DHP decision. Suspension stayed and Respondent placed on probation for eighteen (18) months from October 26, 2004.  Probation Violation Motion filed June 27, 2005. Probation revoked and Respondent suspended with no application for reinstatement for 18 months from August 30, 2005.
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<b>COX, ROBERT A. #25940</b> St. Louis, MO	Suspended on 8/30/05 Suspension Stayed/Probation on 8/30/05  Motion for Leave to File Stipulated Discipline filed February 18, 2005. Court activated briefing schedule. Informant's brief filed May 26, 2005. Motion to Submit Without Further Process filed June 23, 2005.  Suspended on August 30, 2005. Suspension stayed and Respondent placed on probation for 2 years from August 30, 2005.
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NAME	DISPOSITION
<b>CREWS, JAMES F. #18276</b> Tipton, MO	Suspended 4/21/05
DHP Decision and Record filed on August 13, 2004. Briefs filed and oral argument was held on March 1, 2005.	
Suspended indefinitely with leave to apply for reinstatement in one year, with Respondent to comply with certain conditions before reinstatement by order of the Court on April 21, 2005.	

<b>DUBIN, AARON S. #34123</b> St. Louis, MO	Default Disbarment on 9/27/05 Disbarment Set Aside 10/5/05
Information with Notice of Default filed September 27, 2005. Disbarred by order of the Court on September 27, 2005.	
Respondent's Motion to Set Aside Order of Disbarment sustained by Supreme Court on October 5, 2005. Respondent granted 30 days from October 5, 2005 to file an answer with the Chair of the Advisory Committee.	

<b>DYER, STEVEN E. #45397</b> St. Louis, MO	Continuing Suspension New Cause Dismissed 8/30/05 (Without Prejudice)
Respondent suspended by order in Case No. SC86041 dated December 22, 2004.	
Subsequent DHP Proceeding Decision and Stipulation filed July 6, 2005 in Case No. SC86935.	
Cause dismissed without prejudice to filing Concurrence in DHP Decision with Report and Recommendation of the Chief Disciplinary Counsel in the event a petition for reinstatement is filed by respondent.	

NAME	DISPOSITION
<b>EHLER, RENAE L. #46793</b> Keytesville, MO	Default Disbarment on 2/8/05 Disbarment Set Aside 2/18/05 Suspension on 10/21/05 Suspension Stayed-Placed on Probation on 10/21/05
Information with Notice of Default filed on February 8, 2005. Default disbarment by order of the Court on February 8, 2005.	
Motion to Set Aside Default Disbarment sustained by Court on February 18, 2005. Respondent granted until February 28, 2005, to file an Answer with the Chair of the Advisory Committee.	
Joint Stipulation and DHP Decision filed on October 7, 2005. Suspended for 6 months, suspension stayed and placed on probation for 2 years by order of the Court on October 21, 2005.	

<b>FISHER, BRADLEY J. #24910</b> Springfield, MO	Default Disbarment on 9/2/05
Information with Notice of Default filed on September 2, 2005. Default disbarment by order of the Court on September 2, 2005.	

<b>HARDGE-HARRIS, PEGGY #25106</b> St. Louis, MO	Suspended 4/26/05
DHP Decision and Record filed on October 29, 2004. Matter was briefed, and oral argument conducted on April 5, 2005.  Suspended by order of the Court on April 26, 2005, with no application for reinstatement entertained by the Court for a period of 12 months.	

NAME	DISPOSITION
<b>HARRIS, SUSAN L. #43070</b> Colorado Springs, CO	Default Disbarment on 6/10/05
Information with Notice of Default filed June 10, 2005.	
Default disbarment by order of the Court on June 10, 2005.	

<b>HERTACH, GERALD E. #23861</b> Hutchinson, KS	Disbarred on 8/30/05
Rule 5.20-Information for Show Cause Order and Motion for Discipline filed June 6, 2005. (Reciprocal-Kansas)	
Disbarred by order of the Court on August 30, 2005.	

<b>HUDSPETH, GEORGE E., JR.</b> <b>#44524</b> St. Louis, MO 63108	Suspension on 4/6/05
Stipulation of Facts, Conclusions of Law & Recommendation of DHP filed on March 31, 2005.	
Suspension by order of the Court on April 6, 2005, and no petition for reinstatement shall be entertained by the Court prior to Respondent's successful completion of the prerequisites set forth in the stipulation of the parties.	

<b>JACO, WENDELL GEARY #26009</b> Buford, GA	Surrender Denied 11/1/05
Voluntary Surrender of License filed in Supreme Court on May 16, 2005.	
Petition for Voluntary Surrender of License denied by the Court on November 1, 2005.	

NAME	DISPOSITION
<b>JORDAN, ARTHUR D. #36044</b> Florissant, MO	Suspended on 8/30/05
DHP Decision and Record filed on June 1, 2005. Informant's brief filed.  Suspended by order of the Court on August 30, 2005, and no application for reinstatement entertained by the Court for a period of 6 months.	

<b>KAELKE, LEROY WAYNE #44140</b> Rogersville, MO	Default Disbarment on 1/26/05 Disbarment Set Aside 2/22/05
Information with Notice of Default filed January 26, 2005. Respondent's Motion to Set Aside Default Disbarment sustained.  Order of disbarment issued on January 26, 2005, vacated. Respondent granted until March 7, 2005, to file an answer with the Chair of the Advisory Committee.	

<b>KIRCHOFF, WILLIAM W. #39496</b> Jefferson City, MO	Disbarred 4/12/05
Rule 5.21-Motion for Final Discipline filed April 8, 2005.  Disbarred by order of the Court on April 12, 2005.	

<b>KOENIGSDORF, KEITH B. #31031</b> Overland Park, KS	Surrendered License Disbarred on 3/18/05
Voluntary Surrender of License filed on February 23, 2005. Surrender of license accepted and Respondent disbarred by order of the Court on March 18, 2005.	

NAME	DISPOSITION
<b>KRUSE, JERRY JAY #50768</b> Springfield, MO	Default Disbarment on 11/9/05
Information with Notice of Default filed on November 9, 2005. Default disbarment by order of the Court on November 9, 2005.	

<b>LANDMAN, NATHANIEL M. #38514</b> St. Charles, MO	Disbarred 4/26/05
DHP Decision & Stipulation of Concurrence filed on September 24, 2004. Proposed discipline rejected and briefing schedule activated by Court order on October 26, 2004. Informant's brief filed January 14, 2005. Matter submitted without further process.	
Disbarred by order of the Court on April 26, 2005.	

<b>LASKOWSKI, JOSEPH M. #35912</b> Kansas City, KS	Suspended on 2/4/05
Rule 5.21-Motion for Final Discipline filed on January 24, 2005. Suspended by order of the Court on February 4, 2005, and no petition for reinstatement shall be entertained by the Court prior to Respondent's satisfaction of special conditions set forth in Informant's Information and Motion for Discipline.	

<b>LEONARD, TRACY A., JR. #21386</b> Kansas City, MO	Suspended on 6/16/05
DHP Decision and Record filed on March 18, 2005. Brief filed by Informant, submitted with no further process.	
Suspended by order of the Court on June 16, 2005, with no application for reinstatement entertained by the court for a period of three years. Special conditions for reinstatement ordered by the Court.	

<b>NAME</b>	<b>DISPOSITION</b>
<b>LUCAS, CHRISTOPHER EUGENE #43137 (DOB 7/20/63) Overland Park, KS</b>	Disbarment on 11/1/05
Rule 5.21-Motion for Final Discipline filed September 12, 2005. Respondent was found guilty in Kansas of a felony.	
Disbarred by order of the Court on November 1, 2005.	

<b>ODOM, DIANE A. #38519 Licking, MO</b>	Suspended on 5/13/05
Decision of DHP recommending discipline in accordance with Joint Stipulation filed on May 6, 2005.	
Suspended by order of the Court on May 13, 2005, with no petition for reinstatement entertained for a period of one year.	

<b>PATTERSON, DOUGLAS ALLEN #50670 (DOB 7/15/68) Blue Springs, MO</b>	Default Disbarment on 3/17/05
Information with Notice of Default filed March 17, 2005.	
Default disbarment by order of the Court on March 17, 2005.	

<b>PLATKE, LEE #19632 Chesterfield, MO</b>	Suspension Stayed/Probation on 8/30/05
DHP Decision and Stipulation as to Facts filed on August 30, 2005.	
Suspended for one year on August 30, 2005; suspension stayed and Respondent placed on probation for one year.	

NAME	DISPOSITION
<b>POPE, JAMES SCOTT #33228</b> Ozark, MO	Surrendered License Disbarred on 4/14/05
Voluntary Surrender of License filed on March 1, 2005.	
Surrender of license accepted and Respondent disbarred by order of the Court on April 14, 2005.	

<b>PRATT, LAWRENCE L. #41324</b> St. Louis, MO	Public Reprimand on 5/31/05
Stipulation of Concurrence and DHP Decision filed on August 13, 2004. Matter ordered briefed and oral argument was May 3, 2005.	
Public reprimand by order of the Court on May 31, 2005.	

<b>PRICE, JOHN EDWARD #31163</b> Stillwell, KS	Interim Suspension on 6/16/05 Default Disbarment on 2/27/06
Rule 5.24-Information for Interim Suspension and Appointment of Trustee filed on May 27, 2005.	
Interim suspension on June 16, 2005; suspension to remain in place until further order of the court. Trustee appointed.	
Default disbarment by order of Court on February 27, 2006.	

<b>ROBERTS, JOHN RICHARD, JR #45697;</b> Columbia, MO	Suspended on 4/26/05
Rule 5.20-Information and Motion for Discipline filed on January 27, 2005. (Reciprocal-Arizona).	
Suspended from the practice of law on April 26, 2005, with no petition for reinstatement entertained by the Court prior to April 30, 2008.	

NAME	DISCIPLINE
<b>SCHROEDER, DAVID E. #32724</b> Springfield, MO	Public Reprimand on 6/23/05
Joint Stipulation as to Discipline and Motion for Leave to file Stipulation Without Further Process filed on June 7, 2005.	
Public reprimand by order of the Court on June 23, 2005.	

<b>SCHWETYE, FREDERICK H. #23498</b>	Suspended on 1/25/05
DHP Decision & Joint Stipulation filed on December 16, 2004.	
Interim suspension previously issued is dissolved and Respondent suspended on January 25, 2005, with no petition for reinstatement entertained by the Court for a period of 18 months.	

<b>SIEDBAND, ISABEL #53975</b> St. Louis, MO	Suspension Stayed/Probation on 11/1/05
Joint Stipulation of Facts and Recommendation for Discipline filed on November 30, 2004. Proposed discipline rejected and briefing schedule activated by order dated December 21, 2004. Matter was briefed and argued.	
Suspended on November 1, 2005; suspension stayed and Respondent placed on probation.	

NAME	DISPOSITION
<b>SMITH, GRANT W. #34720</b> Jefferson City, MO	Suspended on 1/25/05 Suspension Stayed/Probation on 7/25/05
Joint Motion to Accept Stipulation of the Parties in lieu of Conclusions of DHP Decision filed with complete Record on August 4, 2004. Motion overruled and briefing schedule activated on August 24, 2004. Matter was briefed with oral argument on January 4, 2005.	
Suspended on January 25, 2005, with leave to apply for reinstatement not earlier than January 25, 2007. Suspension stayed beginning July 25, 2005, and Respondent placed on probation with conditions.	

<b>SPECK, FLETCHER #22547</b> Kansas City, MO	Default Disbarment on 6/7/05
Information with Notice of Default filed on June 7, 2005.	
Default disbarment by order of the Court on June 7, 2005.	

<b>STOVER, KATHY A. #34117</b> Topeka, KS	Disbarred on 4/26/05
Rule 5.20-Information for Show Cause and Motion for Discipline filed March 7, 2005. (Reciprocal-Kansas)	
Disbarred by order of the Court on April 26, 2005.	

<b>TACKETT, WILLIAM M. #34813</b> Jefferson City, MO	Public Reprimand on 5/2/05
DHP Decision and Record filed on January 4, 2005. Briefs filed and oral argument was held on April 6, 2005.	
Public reprimand by order of the Court on May 2, 2005.	

NAME	DISPOSITION
<b>WEBER, PHILLIP KENT #45590</b> Kansas City, MO	Default Disbarment on 2/22/05
Information with Notice of Default filed on February 22, 2005.	
Default disbarment by order of the Court on February 22, 2005.	

<b>Supreme Court #86642</b>	Dismissed 9/20/05
Joint Stipulated Recommendation for Discipline filed on March 2, 2005. Briefing schedule activated by Court on April 15, 2005. Briefs filed and oral argument was held on September 13, 2005.	
Disciplinary action dismissed on September 20, 2005.	

<b>WILES, STANLEY L. #21807</b> Kansas City, MO	Suspended on 9/20/05
DHP Decision and Record filed on March 21, 2005. Briefs filed and oral argument was held on September 7, 2005.	
Probation revoked on September 20, 2005 and Respondent suspended with leave to apply for reinstatement not earlier than September 2007.	

<b>WILLIAMS, DERRICK REUBEN, SR #53416</b> Jackson, MO	Suspended on 5/31/05 Suspension Stayed/Probation on 5/31/05
DHP Decision and Record filed on November 24, 2004. Briefs filed and oral argument was held on May 3, 2005.	
Suspended on May 31, 2005; suspension stayed and Respondent placed on probation until May 31, 2007, with conditions.	

**II**

**PENDING COURT MATTERS  
AS OF 12/31/05**

<b>NAME</b>	<b>DISPOSITION</b>
<b>ANDRE, PATRICK #38680</b> Manchester, MO	Disbarred 5/2/06  DHP Decision and Record filed on December 5, 2005. Matter to be briefed and argued. Pending before the Court on December 31, 2005.  (Disbarred May 2, 2006)

<b>BROOKS, PHILLIP A. #42099</b> Lee's Summit, MO	Suspended on 1/31/06 Suspension Stayed/Probation until 2/1/09  Rule 5.21-Motion for Final Discipline filed in Supreme Court on December 28, 2005. Pending before the Court on December 31, 2005.  (Suspended on January 31, 2006. Suspension stayed and Respondent placed on probation until February 1, 2009.)
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<b>SUPREME COURT #87088</b>	Pending 12/31/05
DHP Decision and Record filed on September 6, 2005. Briefs filed and oral argument held January 31, 2006. Pending before the Court on December 31, 2005.	

NAME	DISPOSITION
<b>CRANK, DONALD WILLIAM *</b> <b>#49996</b> St. Louis, MO	Public Reprimand 2/28/06
DHP Decision and Record filed on November 30, 2005. Pending before the Court on December 31, 2005.  (Public reprimand by order of the Court on February 8, 2006.)	

<b>SUPREME COURT #87064</b>	Pending 12/31/05
DHP Decision and Record filed August 23, 2005. Briefs filed and oral argument set for January 11, 2006. Pending before the Court on December 31, 2005.	

<b>FLETCHER, MICHAEL ROBERT</b> <b>#47495;</b> Kansas City, MO	Pending 12/31/05
Rule 5.20-Information & Motion for Discipline filed in Supreme Court on July 1, 2004. (Discipline by US District Court for the Western District of MO).  Pending before the Court on December 31, 2005.	

<b>HAHN, JAMES W., II #31728</b> Cape Girardeau, MO	Suspended 1/13/06
DHP Decision and Record filed on July 11, 2005. Briefs filed and oral argument, November 8, 2005. Pending before the Court on December 31, 2005.  Suspended until further order of Supreme Court on January 13, 2006.	

\*Not to be confused with Don W. Crank of Springfield, MO

NAME	DISPOSITION
<b>SC #87065</b>	Pending 12/31/05
DHP Decision and Record filed August 23, 2005. Briefs filed and oral argument set for January 11, 2006. Pending before the Court on December 31, 2005.	

<b>MCKINSEY, BRIAN A. #30779</b> St. Louis, MO	Disbarred 1/31/06
DHP Decision and Record filed on August 22, 2005. Briefs filed and oral argument set for January 25, 2006. Pending before the Court on December 31, 2005.	
(Disbarred January 31, 2006.)	

<b>NEAL, DEBORAH A. #33367</b> Kansas City, MO	Surrendered License Disbarred on 3/8/06
Voluntary Surrender of License filed on December 9, 2005. Pending before the Court on December 31, 2005.	
(Surrender of license accepted and Respondent disbarred by order of the Court on March 8, 2006.)	

<b>PORZENSKI, JOSEPH #42754</b> St. Charles, MO	Public Reprimand 5/2/06
DHP Decision and Record filed on September 19, 2005. Briefs filed and argument scheduled. Pending before the Court on December 31, 2005.	
(Public reprimand by order of the Court on May 2, 2006.)	

NAME	DISPOSITION
<b>TOLIN, JOSH P. #35836</b> Wildwood, MO	Disbarred 4/11/06
DHP Decision and Record filed on December 27, 2005. Pending before the Court on December 31, 2005.	
(Disbarred by order of the court on April 11, 2006.)	

<b>WATKINS, THOMAS D. #21518</b> St. Joseph, MO	Suspended on 4/11/06 Suspension Stayed/Probation
DHP Decision and Record filed on November 14, 2005. Pending before the Court on December 31, 2005.	
(Suspended on April 11, 2006; suspension stayed and placed on probation for 2 years.)	

### III. REINSTATEMENT PROCEEDINGS

#### A. DISCIPLINARY MATTERS

At the beginning of the year, eleven (11) Missouri lawyers who had previously been disciplined had applications for reinstatement pending for processing by the Chief Disciplinary Counsel. During the year nine (9) additional applications for reinstatement were filed and referred to the Chief Disciplinary Counsel for processing. A total of twenty (20) disciplinary reinstatement applications were handled by OCDC during the 2005 year.

The status of those **20** applications is as follows:

Reinstated	<b>8</b>
Dismissed	<b>1</b>
Pending with OCDC	<b>11</b>

**Eight Disciplined Petitioners Were Reinstated By  
The Supreme Court**

- 1) Norman W. Lampton, St. Charles, MO, Missouri Bar #21955, reinstated on January 25, 2005. Petitioner surrendered license and was disbarred on November 24, 1992.
- 2) James P. Moroney, Springfield, MO, Missouri Bar #23377, reinstated on June 15, 2005. Petitioner was disbarred by default on April 29, 1999.
- 3) Kevin Slaten, St. Charles, MO, Missouri Bar #36656, reinstated on July 25, 2005. Petitioner was suspended with leave to apply for reinstatement four years from September 17, 1996.
- 4) Richard D. Gerber, St. Louis, MO, Missouri Bar #34384, reinstated on August 25, 2005, conditioned upon a period of two years' probation. Petitioner was suspended with leave to apply for reinstatement not sooner than 5 years from February 1996.
- 5) Edward L. Pendleton, Kansas City, MO, Missouri Bar #22992, reinstated on September 23, 2005. Petitioner was suspended with leave to apply for reinstatement no sooner than one year from January 22, 2002.
- 6) Alvin J. Ufkes, Orange, CA, Missouri Bar #14882, reinstated on November 22, 2005. Petitioner was suspended with leave to apply for reinstatement one year from September 30, 1998.
- 7) Michael C. Walther, St. Louis, MO, Missouri Bar #18618, reinstated on November 23, 2005. Petitioner was suspended with leave to apply for reinstatement 18 months from December 23, 2003.
- 8) Allen S. Russell, Sr., Leawood, KS, Missouri Bar #23147 (DOB 9/7/46). Reinstated on December 20, 2005. Petitioner was disbarred on January 21, 1997.

**One Petition Was Dismissed By The Supreme Court**

- 1) Marshall G. Shain, Jr., Missouri Bar #24745, cause dismissed on April 1, 2005. Petitioner was disbarred on April 14, 1999.

## **B. NON-DISCIPLINARY REINSTATEMENTS**

The OCDC Jefferson City staff also handle investigations and reports to the Supreme Court on petitions for reinstatement by those attorneys suspended for non-payment of enrollment fees (Rule 6.01). The OCDC also processes applications of attorneys on inactive status requesting to be returned to active status (Rule 6.06). In 2005, the OCDC received twelve (12) petitions per Rule 6.01 and eighteen (18) petitions per Rule 6.06, for a total of thirty (30) non-discipline reinstatement files.

### **Eight Applicants Were Reinstated After Automatic Suspension For Non-payment of Enrollment Fees, Rule 6.01(f)**

At the beginning of 2005, six (6) applications were pending before the Chief Disciplinary Counsel's office from the previous year for reinstatement based on non-payment of enrollment fees for a period in excess of three years. Twelve (12) lawyers filed applications for reinstatement after automatic suspension under Rule 6.01(f) during the year 2005 and said applications were referred to the Chief Disciplinary Counsel's office. Recommendations were made and reinstatements granted on eight (8) of those applications. One (1) petition was denied and nine (9) applications were still pending investigation in the Chief Disciplinary Counsel's office at the end of 2005.

### **Sixteen Applicants Were Reinstated To Active Status, Rule 6.06**

At the beginning of 2005, two (2) applications were pending before the Chief Disciplinary Counsel's office from the previous year by an attorney requesting a return to active status. During 2005, eighteen (18) lawyers who had previously requested inactive status filed applications for reinstatement under Rule 6.06 and these applications were referred to the Chief Disciplinary Counsel's office. Recommendations were made by OCDC and reinstatements granted on sixteen (16) applications. One (1) application was dismissed and three (3) applications remained pending investigation in the Chief Disciplinary Counsel's office at the end of 2005.

#### **IV. COMPLAINTS RECEIVED AND ACTED UPON IN 2005**

In 2005, a total of 2,410 letters of complaint were received by the Office of Chief Disciplinary Counsel regarding alleged misconduct of attorneys in the state of Missouri. Of the total complaint letters, 816 formal investigation files were opened and 119 were placed in the Informal Resolution Program, for a total of 935.

The office took action on those complaint letters as follows:

Of those **935** files:

- 528** Investigation files were sent to regions
- 288** Investigation files were assigned to the Office of Chief Disciplinary Counsel
- 119** Complaint files were placed in the Informal Resolution Program of OCDC

Of the **1,475** remaining complaints:

- 1,041** Investigations not opened
- 288** Insufficient information to proceed
- 54** Referred to Fee Dispute Committees
- 73** Referred to Complaint Resolution Committee
- 19** Placed in “Inquiry” status

The office received and responded to one thousand forty-one (1,041) **letters** where the office concluded that an investigation was not warranted or was not appropriate at that juncture.<sup>1</sup> In addition, nineteen (19) files were placed in “Inquiry” status for monitoring whether an investigation should be opened in the future. Of those matters in which the office determined not to open an investigation, the Chief Disciplinary Counsel received approximately one hundred thirteen (113) letters requesting a review of the staff decision not to investigate their initial complaint. These complainants were provided a further review and response by OCDC staff regarding the decision not to investigate through our internal review process. In only (2) instances did the Chief Disciplinary Counsel determined to take further action on the matter by opening an investigation

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<sup>1</sup> In certain instances, OCDC determines not to open a complaint until after litigation is completed.

or gathering additional information in order to make a determination whether to open an investigation.<sup>2</sup>

#### **A. Informal Resolutions Of Complaints Without Opening Formal Investigation**

In August 2001, the Office of Chief Disciplinary Counsel initiated a new program in an attempt to address a concern and suggestion made by the American Bar Association team that made recommendations at the request of the Supreme Court in February, 2001, regarding the Missouri attorney discipline system. One recommendation (Recommendation #4) was to implement a complaint hotline which would provide a toll-free number for complainants to report a complaint. The recommendation also addressed a concern that the system be more “consumer friendly” in assisting complainants with expressing their complaints and to resolve matters where possible at the intake-screening stage.

In response to that concern, the “Informal Resolution Program” was implemented and enjoyed great success in 2001. In 2002, the program was instituted as a permanent method of complaint resolution within the OCDC office. In this program, intake counsel identifies appropriate cases which are then assigned to a paralegal with directions to contact the complainant, the respondent, or both, to assist in resolving the complaint rather than proceeding with a formal investigation. This is most often in response to a complaint that the client has not had adequate communication from the lawyer or where the client is attempting to obtain file documents without success. It may also be used in a case where the complainant has trouble articulating the nature of the complaint, or seems confused about the lawyer’s responsibilities or the legal process. The program is very successful in reducing complaint processing time as well as preserving the attorney/client relationship.

In 2005, one hundred nineteen (119) complaints were handled through the Informal Resolution Program. Of the one hundred nineteen (119) complaints, ninety-two (92) were resolved without resorting to opening a disciplinary investigation, nine (9) were unresolved and an investigation file was opened, eleven (11) were closed, and seven (7) were pending as of December 31, 2005. Processing time on these complaints averaged twelve (12) days.

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<sup>2</sup> Due to workload issues, this discretionary review option was temporarily discontinued mid-year in 2005.

## **B. Advisory Committee Review**

During 2005, at the conclusion of an investigation when no probable cause was found, complainants requested Advisory Committee review on fifty-nine (59) complaint files. The Advisory Committee upheld the closure on fifteen (15) of these review files and issued three (3) cautionary letters that were sent to lawyers at the conclusion of their review. The Advisory Committee assigned four (4) of the review files for further investigation. Thirty-seven (37) of those review files were pending with the Committee at the end of the year.

## **C. Missouri Bar Complaint Resolution/Fee Disputes**

The Chief Disciplinary Counsel referred seventy-three (73) complaints to the Missouri Bar Complaint Resolution Program for resolution outside of the disciplinary process in accordance with Rule 5.10. The report of the Complaint Resolution Program on the results of their efforts to resolve those complaints is attached and made a part of this annual report.

During the year, fifty-four (54) complainants were referred to Fee Dispute Committees.

The Missouri Bar, Kansas City Metropolitan Bar Association and the Bar Association of Metropolitan St. Louis continued to provide assistance to the discipline process in the form of the fee dispute resolution programs. These programs are valuable to the lawyers of the state and legal consumers by providing a forum for complaints which are primarily fee-oriented, to be addressed through non-disciplinary means. The Regional Disciplinary Committees, the Office of Chief Disciplinary Counsel and the Advisory Committee are grateful to the bar associations for their cooperation and assistance in the Fee Dispute and Complaint Resolution Programs.

## **V. DISCIPLINE ACTION INITIATED**

### **A. Admonitions**

The Office of Chief Disciplinary Counsel administered twenty-four (24) written admonitions and the three Regional Disciplinary Committees administered seventy (70) written admonitions which were accepted by

members of the Missouri Bar. A total of ninety-four (94) admonitions were administered. In addition, eighty-four (84) cautionary letters were sent to lawyers by OCDC and the committees at the conclusion of the investigations. Cautionary letters are not disciplinary action, but merely a caution to the attorney that their conduct may have constituted a violation of the rules or could lead to a future finding of a violation of the rules. These letters are used to educate the attorney on ethical responsibilities in cases where the state of the law or the facts may not be clear or to alert the attorney that a particular course of conduct, if unchecked in the future, may cause additional complaints to be filed.

## **B. Investigation Summary**

Region	Investigations Pending 1/1/05	Investigations Referred 2005	Investigations Disposed in 2005
IV	146	218	121
X	127	207	179
XI	92	103	97
OCDC	444	407*	367*

\* Includes Informal Resolution

OCDC figures include cases referred/processed by volunteers under the direction of OCDC.

Region	Admonitions Issued in 2005	Cautionary Letters Issued in 2005
IV	34	18
X	17	12
XI	19	0
OCDC	24	54

The figures for OCDC include files that were handled by volunteers in the Springfield area, under the direct supervision of the OCDC. This arrangement was initiated under a Pilot Program established by OCDC and local bar leaders pursuant to the Chief Disciplinary Counsel's authority to accept the services of volunteers under Rule 5.07.

In 2004, several Southwest Missouri attorneys, led by current Missouri Bar Vice President Ron Baird, proposed to the Office of Chief Disciplinary Counsel that a project be created to use area volunteer lawyers and non-lawyers to help with the disciplinary caseload in the Springfield-Greene County and surrounding areas. After much discussion, a pilot project was

initiated in January 2005 to determine the feasibility of that concept. The Chief Disciplinary Counsel appointed a committee of three lawyers and one non-lawyer to review cases, create efficient systems, and determine whether an adequate caseload existed to gain and maintain expertise in Rule 4 (rules of professional conduct) and Rule 5 (disciplinary procedures). During the pilot project the Committee processed 33 cases. After one year, the Chief Disciplinary Counsel and the Springfield Committee agree that the program was successful. After balancing the administrative costs of the additional committee and the staff resources to support it, with its contribution to case processing, a benefit to the system and overall case processing seemed apparent. Subsequently, a proposal was sent to the Court in 2006 requesting the establishment of a Court- appointed committee.

### **C. Filed Hearing Matters**

#### **FILING INFORMATIONS**

In 2005, due to the combined efforts of OCDC and the Regional Disciplinary Committees, Informations (the formal charging document before a disciplinary hearing panel) were filed on ninety-nine (99) files. “Files” indicate individual complaints against attorneys. An Information against one attorney may include multiple files. The number of Informations filed before the Advisory Committee was thirty-two (32).

Thirty-five (35) Informations representing one hundred five (105) complaint files were pending before the Advisory Committee and Disciplinary Hearing Panels at the beginning of 2005. Eight (8) Informations resulted in defaults by the respondent, with default Informations being filed directly in the Supreme Court. Hearings were completed before Disciplinary Hearing Panels on twenty-five (25) attorneys involving fifty-eight (58) files.

### **D. Informant’s Briefs, Replies And Oral Arguments**

Nineteen (19) Informant’s opening briefs were filed in the Supreme Court in 2005. Of those nineteen, seven were briefed because OCDC did not concur in a DHP’s recommended sanction, six were briefed because the Respondent did not concur in a DHP’s recommended sanction, and six were cases the Court ordered briefed after the parties filed a joint stipulation and joint recommendation for sanction. In addition, six (6) reply briefs were filed. A total of twenty-five (25) briefs were filed by OCDC in 2005. Twelve disciplinary cases appeared on the Court’s oral argument

calendar in 2005. The Court published two disciplinary opinions in 2005: *In re Crews*, 159 S.W.3d 355 (Mo. Apr 05, 2005) and *In re Tackett*, 159 S.W. 3d 846 (Mo. Apr 14, 2005).

#### **E. Cases Filed In The Supreme Court Pursuant To Rule 5**

##### **RULE 5.20**

Three cases based on discipline administered in another jurisdiction (reciprocals) were filed in 2005: *In re Roberts*, SC86563, *In re Stover*, SC86648, and *In re Hertach*, SC86871.

##### **RULE 5.21**

Six matters under Rule 5.21 were filed advising the Court that lawyers had pled guilty, been found guilty, or pled nolo contendere to violations of criminal laws: *In re Buchli*, SC84764, *In re Laskowski*, SC86555, *In re Kirchoff*, SC86723, *In re Lucas*, SC87099, *In re Braun*, SC87230, and *In re Brooks*, SC87354.

##### **RULE 5.24**

Two Informations requesting interim suspensions for threat of harm were filed in 2005: *In re Price*, SC86861, and *In re Adams*, SC86870. The Court ordered interim suspensions in both cases.

##### **RULE 5.25**

Four Surrender Applications were filed in 2005 and Report and Recommendations were prepared and filed on three of these in 2005: *In re Koenigsdorf*, SC86620, *In re Pope*, SC86640, and *In re Jaco*, SC86836.

### **VI. UNAUTHORIZED PRACTICE OF LAW**

The Office of Chief Disciplinary Counsel opened complaint files on approximately twenty-seven (27) individuals and organizations alleged to have engaged in the unlawful practice of law.

Some of these cases were referred to local prosecuting attorneys or to the Consumer Protection Division of the Missouri Attorney General's office. Others were resolved through communication with the company or individual.

Due to the workload and staff resources of OCDC, the office limited its efforts to conducting in-depth investigations only when there appeared to be widespread consumer fraud occurring. Where appropriate, the office conducted investigations of complaints, and the office referred the materials to law enforcement for criminal prosecution as OCDC is only authorized to seek a civil injunction against a party for engaging in the unauthorized practice of law.

To be effective in this area the office staff attorneys suggest the revision of certain rules and statutes and additional staff be assigned to this function.

## **VII. PRESENTATIONS BY OCDC STAFF**

During 2005, OCDC staff gave 40 presentations at Continuing Legal Education seminars, (CLE or MCLE) organizations and other programs. More specifically, the OCDC staff gave presentations to the following groups: BAMSL Probate & Trust Annual Meeting; California Bar and Organization of Bar Investigators (training conference); Circuit Clerk Training; Cole County Bar Association; Eastern Jackson County Bar; Family Law Conference; KCMBA; Lawyers Assistance Conference; Lawyers Association of Kansas City; Missouri Association of Trial Attorneys Annual Meeting; MO Bar telephone seminars; MO Bar Government Attorney seminar; MO Legal Secretaries Association; NOBC Conference; Radio Station KLIK; Randolph County Bar; Regional Committee Training Meetings; Rotary Organization; Springfield Metropolitan Bar Association; St. Louis University; William Woods College. The OCDC staff also were speakers at the MO Bar Annual Meeting, the MO Bar telephone CLE; the Solo and Small Firm Conference, and many other CLE presentations.

## **VIII. SIGNIFICANT ACTIVITIES IN 2005**

### **Annual Training Of Regional Disciplinary Committees And Special Representatives.**

The disciplinary system in Missouri utilizes volunteers in the two large metropolitan areas to investigate cases. The remainder of the cases from other parts of the state are investigated by the OCDC staff in Jefferson City. In 2005, there were sixty-eight (68) active volunteers acting in the capacity of Regional Disciplinary Committee members in the Kansas City

and St. Louis areas. Fifty (50) of those members were lawyers and eighteen (18) were non-lawyers. The regional disciplinary committees are divided into ten (10) divisions – three in Kansas City, three<sup>3</sup> in St. Louis City and four in St. Louis County. The committees are assisted by attorneys (Special Representatives of OCDC) who are paid on an annual basis by the OCDC to help the committees on a part-time basis. The ten (10) Special Representatives are also otherwise employed in the practice of law. These attorneys also act as trial counsel at disciplinary hearings if formal charges are filed, once they are so designated by the Chief Disciplinary Counsel.

On October 28, 2005, a full day training session conducted by OCDC was held in St. Louis for members of active Regional Disciplinary Committees from across the state. This was the fourth annual training session. Lawyer participants received continuing legal education credit for their participation.

### **Other Training Sessions:**

In 2005, OCDC attorney staff participated in training by attending the National Organization of Bar Counsel conferences.

OCDC is an accredited MCLE provider. In 2005, we continued to host CLE presentations for the benefit of volunteers and special representatives. OCDC presented CLE presentations on current issues in the disciplinary system at luncheons honoring the Regional Disciplinary Committee members in Kansas City and St. Louis.

Paralegals in the office attended and presented training through the Missouri Paralegal Association.

A Paralegal-Investigator in the OCDC attended a three day training conference co-hosted by the Organization of Bar Investigators (OBI) and the California Bar Association. This Paralegal-Investigator served as president of this national organization in 2005.

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<sup>3</sup> In July 2005, one of the three divisions in St. Louis City was eliminated. Its members were re-assigned to the other two divisions. The reduction in number of divisions was precipitated by a long term evaluation of the volume of complaints in the St. Louis area and a determination that it was no longer necessary to continue to employ a third special representative to assist a division based on the number of complaints divided across the St. Louis area.

## **Rules of Professional Conduct - Rule 4-1.15 – File Retention**

On August 24, 2004, the Missouri Supreme Court amended Rule 4-1.15, with an effective date of January 1, 2005, by adopting a new subdivision (h) authorizing lawyers to destroy client files 10 years after completion or termination of the representation unless the lawyer and the client make other arrangements.

Certain restrictions on the destruction of client files are provided in the Rule.

The Rule does not affect a lawyer's obligation to maintain trust account records as required by subsection (a) of this Rule.

## **Rule 4-5.5 Unauthorized Practice of Law, Multijurisdictional Practice**

In 2005, the Supreme Court adopted, (effective January 1, 2006), Rule 4-5.5 (Unauthorized Practice of Law). The amendment more clearly delineates what constitutes the unauthorized practice of law in Missouri. The amended rule, with extensive new commentary, attempts to address the myriad modern situations confronting lawyers whose practice may weave among multiple jurisdictions, state and federal, on a daily basis. The ABA's Ethics 2000 project initiated the movement to amend state ethics rules to allow for ethical practice in a modern environment where state borders less frequently provide a clear cut boundary for a lawyer's practice.

## **Rules 4-7.1; 7.2; 7.3 Advertising Rules**

On September 19, 2005, the Supreme Court repealed Rules 4-7.1, 4-7.2 and 4-7.3 and adopted new rules 4-7.1, 4-7.2 and 4-7.3 with an effective date of January 1, 2006. These new rules contain major changes to the rules pertaining to lawyer advertising resulting from proposals of a special committee of the Missouri Bar. The changes are too numerous to summarize here.

The rules require specific language that must be included in lawyer advertising. Among the changes are: any written solicitation sent by mail must contain "ADVERTISEMENT" on the envelope and all written solicitations must be plainly marked "ADVERTISEMENT" on the top of the first page. Also any advertisement must conspicuously state: "The

choice of a lawyer is an important decision and should not be based solely upon advertisements.”

### **Rule 4-8.5 Disciplinary Authority, Choice of Law**

Supreme Court Rule 4-8.5 (Jurisdiction) was also amended in 2005 (effective January 1, 2006), to address issues involving disciplinary jurisdiction in a modern multijurisdictional practice environment. The amendment provides for disciplinary jurisdiction over non-Missouri licensed lawyers whose conduct raises ethical concerns in Missouri. It also clarifies choice of law questions bound to arise in multijurisdictional transactions. The Rule 4-8.5 Rule amendment works in tandem with changes made to rule 4-5.5.

### **Rule 5.085 Period of Limitation**

During 2005, a committee of the Missouri Bar, with input from the OCDC and Legal Ethics Counsel developed a proposal for a statute of limitations for disciplinary complaints. On January 31, 2006, the Missouri Supreme Court adopted a new Rule 5.085, effective as of January 1, 2007, relating to a period of limitation for disciplinary complaints. The rule with normal exceptions for tolling, requires that investigations into disciplinary cases commence within five years after disciplinary counsel knows or should know of the misconduct. The provision does not apply to discipline following: (a) felonies or (b) discipline in other jurisdictions.

### **Rule 15.06(f) MCLE Compliance and Suspension**

Effective July 1, 2005, the Missouri Supreme Court amended subdivision (f) of Rule 15.06 to automatically suspend from practice, any lawyer not in compliance with Rule 15 MCLE (Mandatory Continuing Legal Education) requirements. Subsequently, in 2006, the rule was further amended to provide that lawyers so suspended shall be retroactively reinstated as a matter of course if the lawyer provides certification of compliance and a \$100.00 late fee within three years to the Court. Any lawyer not so reinstated shall apply pursuant to Rule 5.28.

In conjunction with amendment of Rule 15.06, changes occurred in 2006 to Rules 5.28 and 6.05 to effectuate the process of suspension for non-compliance with mandatory continuing legal education. (see below)

## **Rule 5.28**

On March 1, 2006, the Missouri Supreme Court amended subdivisions (a) and (d) of Rule 5.28, which became effective April 3, 2006. The amended subdivision (a) requires a person who has been suspended for three years or more for failure to comply with the MCLE requirements of Rule 15 to seek reinstatement pursuant to Rule 5.28. Amended subdivision (d) provides that the requirements of Rule 5.28(b)(4) and (5) do not apply to a person seeking reinstatement because the person's license was suspended for more than three years for failure to comply with the MCLE requirements of Rule 15.

## **Rule 6.05**

On March 1, 2006, the Missouri Supreme Court ordered that effective April 3, 2006, Rule 6.05 is amended to provide that a lawyer who is suspended for failing to comply with the MCLE requirements of Rule 15 and who engages in the practice of law is guilty of the unauthorized practice of law.

### **Physical Facilities:**

The facility in Jefferson City is filled to capacity with staff and file storage. In August, 2004, the Supreme Court authorized OCDC to hire an architect to develop plans for expansion of its building onto an adjoining plat of land which was purchased in 2003 for this purpose. Preliminary plans were begun in late 2004 to accommodate future staff needs in an expanded building. In December, 2004, an ad hoc building committee was appointed by the Court to facilitate the project. In 2005, due to various economic considerations, plans for expansion of the OCDC building were indefinitely put on hold.

The file storage issues at OCDC were addressed in 2005, by acquiring additional off-site storage. Consultations with vendors who could provide large scale scanning/imaging services indicated high costs would be associated with processing the large volume of historical records OCDC maintains. It was determined that the more effective way to address the problem for the immediate term was to re-evaluate the wisdom of scanning limited records after implementation of the new case management and tracking system (scheduled for late 2005) was complete.

The parking lot at OCDC is showing increased signs of wear and cracking. It may need maintenance work in the near future. The parking lot presently accommodates fourteen (14) cars and one (1) handicapped space. There are 15 staff at the OCDC office, therefore, there are insufficient parking spaces to meet current staff needs. There is no handicapped access to the lower floor of the building aside from driving around the building, over an unpaved area of grass to arrive at a loading room door in the basement. Action has not been taken on these issues since further discussions regarding any building and parking expansion have been tabled.

### **New Case Management and Document Management System**

In November, 2005, the final step was taken in a long term search and identification of an appropriate computer system to store disciplinary records, to allow for efficient case tracking, and to assist in document management. Implementation of a system called Justware began after staff training, and months of preparatory work to convert the existing data in the case management system the office had used since approximately 2000. The system uses the records information on attorneys from the official data base of the Missouri Bar and the Supreme Court as a continuous feed into Justware. In this manner OCDC has a current confidential computer record for each attorney in the state to which it can add specific data about complaints, actions taken, notices sent, and discipline imposed. These records are only accessible by OCDC. The system also allows for electronic storage of materials related to each attorney and each case. The information initially loaded into the system on discipline matters only went back to the year 2000 when the former, limited function, case management system was started. A substantial project lay ahead for the future to backload into the system, relevant disciplinary records in order to make the data base complete. It is anticipated that this process will also assist in reducing the amount of paper files needed to be stored.

Until the present time, the primary source of information on an attorney's discipline history, which has served as the "official disciplinary record" is contained in a physical file folder set up for each attorney upon admission to the Bar. Specific information is written on the cover of the folder, other information is contained as loose documents within the folder. Other sources of disciplinary information are found on a "Word" document on the shared drive of the computer network at OCDC and on a separate data base kept for Admonitions. This has been an inefficient way of

retrieving all relevant information needed to evaluate an attorney's history in order to assess a pending complaint.

Likewise, until the implementation of Justware in November, 2005, OCDC staff had to obtain current and "official" information on an attorney's address, status of dues payments, status of Mandatory Continuing Legal Education (MCLE) compliance, or any other official record of the attorney's history, by accessing the Missouri Bar's data base on an individual basis or calling to find out particulars. Each of these steps added processing time to preparation of complaint files. At critical stages in the evaluation process of any complaint file, these resources must be again reviewed to determine if there has been any change that would alter the recommendation at that point. At any stage at which correspondence is sent to an attorney which has "official" significance, such as a notice to the attorney of responsibility to respond to a complaint or serving a pleading on the attorney, the official data base maintained by the Missouri Bar of current addresses of record must be consulted. For this reason, the staff made it a requirement of any new case management system that integration of the Missouri Bar records be available on a continuous and instantaneous basis. The cumbersome process of retrieving records on respondent attorneys as well as their complaint history, was an impediment to staff attorneys efficiently processing cases.

By way of background, one of the ABA Recommendations to the Supreme Court in 2001, suggested that a computer link to the Jefferson City office with the other participants<sup>4</sup> in the disciplinary system (special representatives serving volunteer committees) be established. This would assist to more easily share relevant and developing information on cases. Until the present time, a photocopy of a handwritten list of past discipline investigations and their disposition is provided to the special representatives as the "discipline history" of any respondent attorney they are investigating. During the course of the ongoing investigation, the responsibility is placed on the special representative to determine, at critical points in the evaluation process, whether there is any change in that information.

For all these reasons, it was determined that it was important to replace the existing case management system with a more advanced data base that can handle all the relevant information necessary for evaluation,

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<sup>4</sup> The recommendation was more specifically to set up branch offices in Kansas City and St. Louis and the computer link would be accessible there. The Supreme Court has not adopted the recommendation regarding branch offices.

provide easy, user-friendly access to the information in one location, and incorporate existing official records from the Missouri Bar system into the data base as well as perform additional functions. Once this is accomplished, the proposed “link” between OCDC and the special representatives and regional committees can be considered.

## **IX. PROGRESS ON BACKLOGGED INVESTIGATIONS**

A common problem for attorney disciplinary agencies across the country is processing cases in a timely manner. Similarly, it was noted in 2002 that the Missouri attorney discipline system had a significant backlog of investigation files, particularly in the category of investigation files pending over 360 days. A major focus of the Chief Disciplinary Counsel in 2002-2003 was to find methods to reduce the number of investigation files pending in this category.

Case processing guidelines were established in 2003 at the direction of the Supreme Court. A goal was set that no more than 10% of total investigations be at the over 360 days pending category.

The OCDC staff and the Regional Disciplinary Committees expended extraordinary efforts to reduce this backlog of cases in 2002 and 2003 and achieved great success. By December 31, 2003, we had achieved a figure of only 12% of cases in “backlog”. However, beginning in 2004 the number of backlogged cases pending 360 days and over increased.

- As of December 31, 2004, the percentage of investigation files in the over 360 day category was 16% of the total investigation (normal)<sup>5</sup> files.
- On December 31, 2005, the percentage of investigation files in the over 360 day category was 24% of the total investigation (normal) files.

The case processing guidelines further provide that the majority (80%) of investigations be completed within six months (180 days).

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<sup>5</sup> The OCDC case management system reports investigations in the categories of “normal”, “held”, and “post AC review”. Normal cases are active pending files which have been processed without interruption. Held files are those temporarily placed in a non-active status because of pending litigation or other factors delaying the active pursuit of the investigation. Post AC files are those which were fully investigated, closed, then returned for further investigation after review by the Advisory Committee because it was believed by the committee that the finding of no probable cause was not appropriate.

According to case management reports, as of December 31, 2004, cases pending in investigation over six months constituted approximately 40% of the total investigation (normal) files. As of December 31, 2005, cases pending in investigation over six months constituted approximately 46% of the total investigation (normal) files. In contrast, the overall number of pending complaints at the end of the year showed significant progress. On December 31, 2004, 581 complaints were pending in the system whereas by December 31, 2005, we had reduced that number to 537.

It is believed that the number of investigation files pending over 360 days remains high, in part, because the number of complaints received (shown below) has increased dramatically in recent years and staffing has not been sufficient to handle the load.

2000 – 1649 complaints  
2001 – 1506 complaints  
2002 – 2002 complaints  
2003 – 2529 complaints  
2004 – 2493 complaints  
2005 – 2410 complaints

## **SUMMARY OF DISCIPLINE ACTIONS**

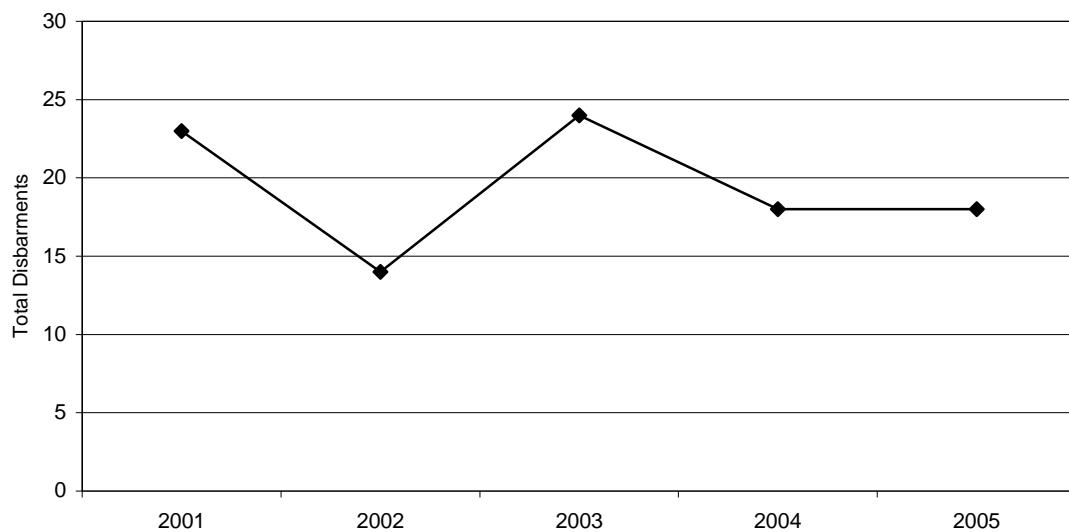
During 2005:

- **18** Eighteen lawyers were disbarred; and three (**3**) of those were set aside by the Court;
- **21** Twenty-one lawyers were suspended; and six (**6**) of those suspensions were stayed and attorneys placed on probation with conditions;
- **5** Five lawyers received public reprimands;
- **94** Ninety-four written admonitions were administered by the Regional Disciplinary Committees and the Office of Chief Disciplinary Counsel; and
- **3** Three additional matters were dismissed by the Court as moot, rejected without prejudice to re-filing, or other grounds.
- **1** One surrender of license was denied by the Court.

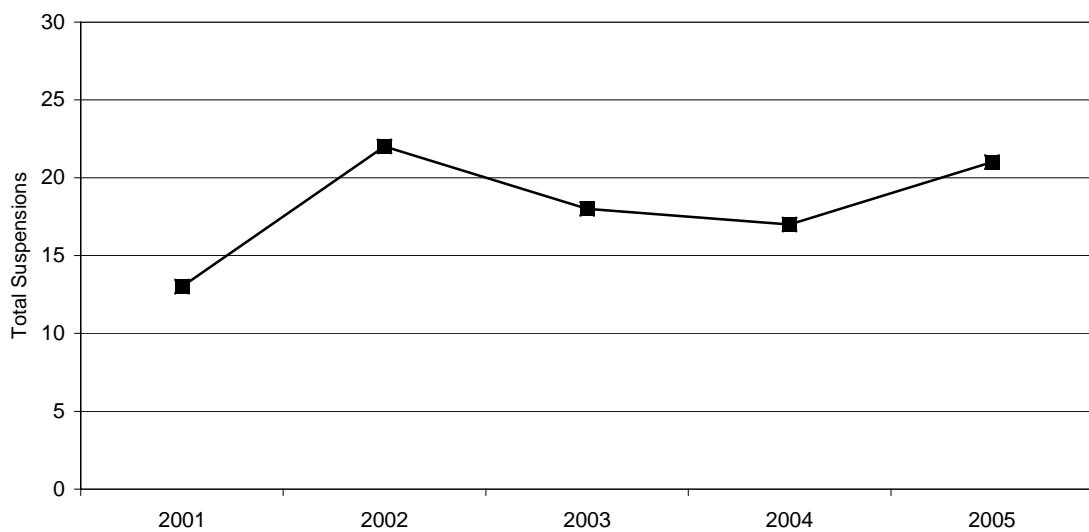
These figures include proceedings by all committees and the Office of Chief Disciplinary Counsel.

In light of the disbarments and suspensions, sixty-one (61) other complaints about the disbarred and suspended attorneys were closed; and additional complaint files that were still in the process may have been closed due to disbarment or suspension of the attorneys.

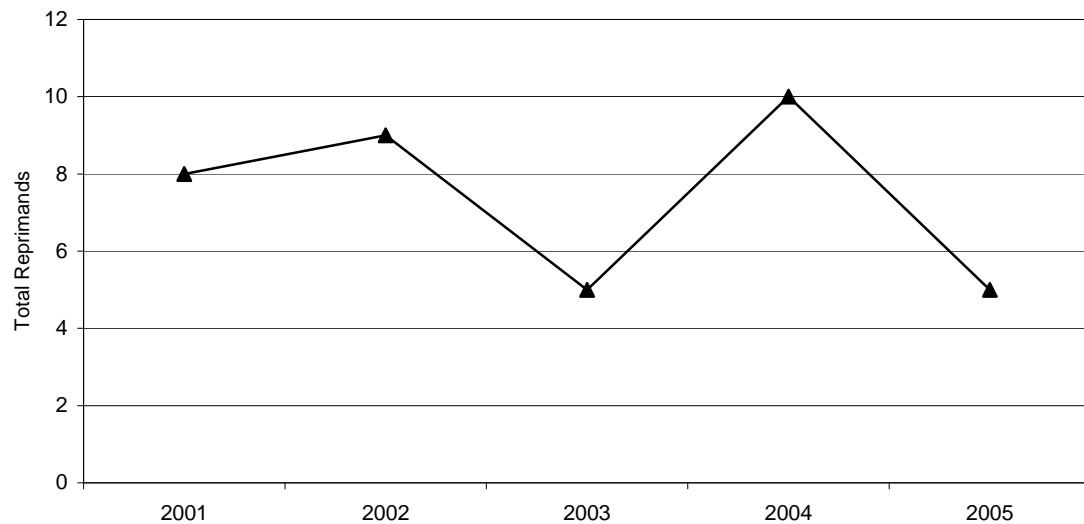
### **Disbarments**



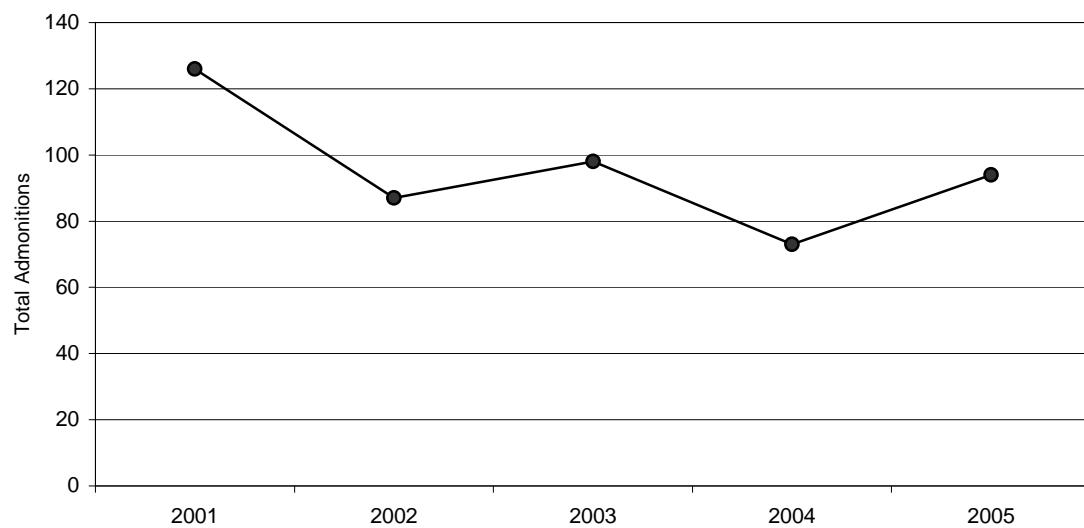
### **Suspensions**

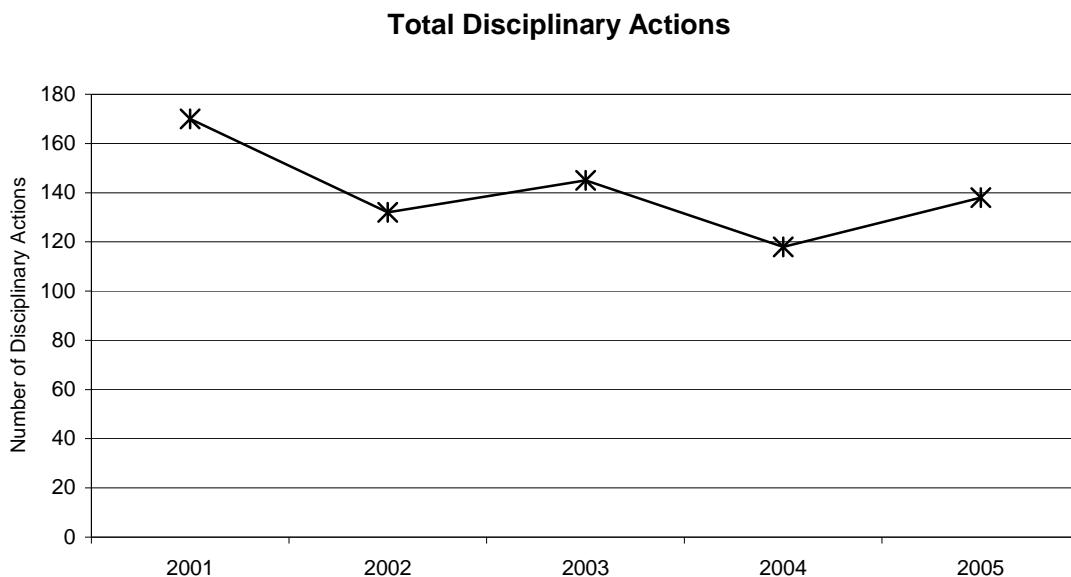


### **Reprimands**



### **Admonitions**





*In 2005, there were a total of (138) disciplinary actions including admonitions and formal discipline matters.*

In recent years, there have been fewer admonitions issued for repeat offenders which has decreased the total disciplinary actions. Under current criteria and as a general rule, admonitions are only offered for an isolated instance of misconduct. Chronic offenders are evaluated by different criteria to determine whether remedial programs are warranted or by pursuit of higher levels of discipline. Admonitions have decreased for first-time offenders as well by utilizing educational tools, such as diversion programs or cautionary (educational) letters, in appropriate circumstances.

The total number of complaints opened as formal investigations during 2005 was eight hundred sixteen (816). The 15 most common complaints and the fields of practice most likely to produce complaints are:

<b>NATURE OF VIOLATIONS *</b>	<b>NO.</b>
Rule 1.4 (Communication)	245
Rule 1.3 (Diligence)	231
Rule 8.4(c) (Dishonesty, Fraud, Deceit, Misrepresentation)	82
Rule 1.7 (Conflicts)	51
Rule 1.15 (Safekeeping Property)	49
Rule 1.5 (Excessive Fees)	30
Rule 5.5 (Unauthorized Practice)	29
Rule 1.16 (Improper Withdrawal)	27
Rule 1.1 (Competence)	24
Rule 8.4(b) (Criminal Activity)	21
Rule 7.2 (Advertising)	15
Rule 3.3 (Truth to Tribunal)	6
Rule 1.6 (Confidentiality)	5
Rule 3.5(b) (Ex Parte Contacts)	5
Rule 5.3(b) (Supervisory Responsibility)	5

\* Many complaints included more than one allegation.

The most prevalent areas of law which resulted in investigations are shown below.

<b>AREA OF PRACTICE</b>	<b>NO.</b>
Domestic	209
Criminal	122
Other	121
Torts	87
Bankruptcy/Receivership	56
Estate/Probate	45
Traffic	32
Litigation	28
Workers Compensation	26
Administrative/Governmental	22
Real Property	20
Immigration/Naturalization	16
Contracts	10
Collections	8
Labor Law	7
Landlord/Tenant	6

Dated at the Office of Chief Disciplinary Counsel at Jefferson City, Missouri this 21st day of July, 2005.

Respectfully Submitted,

MARIDEE F. EDWARDS  
Chief Disciplinary Counsel

## **2005 LEGAL ETHICS COUNSEL ANNUAL REPORT**

### **LEGAL ETHICS COUNSEL ROLE**

#### **Informal Advisory Opinions**

Pursuant to Rule 5.30(c), the Legal Ethics Counsel issues nonbinding informal advisory opinions.

The Legal Ethics Counsel provided informal advisory opinions in response to 1241 oral contacts. Some of the contacts involved multiple, separate questions and therefore multiple opinions. Opinions given in conjunction with informal contact at bar meetings and CLE programs are generally not included in this count. Opinions provided at the “Legal Ethics Counsel Booth” at the Solo and Small Firm Conference are included.

The Legal Ethics Counsel also provided 75 written informal advisory opinions. Of these, six were summarized and published with the approval of the Advisory Committee.

#### **CLE Presentations**

The Legal Ethics Counsel prepared and gave 34 CLE presentations for various groups, including: The Missouri Bar, Lawyers Association of Kansas City, University of Missouri at Kansas City Law School, St. Louis University Law School, Boone County Bar Association, Joplin Bar Association, National Organization of Bar Counsel, and the Office of Chief Disciplinary Counsel.

### **COUNSEL TO ADVISORY COMMITTEE ROLE**

Rule 5.07(b) provides that the Legal Ethics Counsel shall serve as staff to the Advisory Committee.

#### **Review Summaries**

Pursuant to Rule 5.12, the Advisory Committee reviews investigation files if the OCDC or a Regional Disciplinary Committee finds no probable cause and the complainant requests review. The Legal Ethics Counsel office summarized and distributed 76 review files.

#### **Hearings**

The Legal Ethics Counsel office provided assistance with arrangements for hearings, as requested, to Disciplinary Hearing Officers.

### Meetings

The Legal Ethics Counsel office coordinated arrangements for four regular Advisory Committee meetings around the state, as well as several special meetings and conference call meetings.

### Formal Opinions

The Legal Ethics Counsel provided assistance in relation to drafting formal opinions.

### Other matters

The Legal Ethics Counsel participated in meetings regarding rules proposed by The Missouri Bar on multijurisdictional practice.

The Legal Ethics Counsel worked with The Missouri Bar on a “statute of limitations” rule that was ultimately presented to the Supreme Court and formed the basis for a rule adopted by the Court.

The Legal Ethics Counsel maintained a website for the Advisory Committee and Legal Ethics Counsel. The website included a public area and a private area accessible only to Disciplinary Hearing Officers. The public area included articles on ethics issues and Rules 4 and 5.

The Legal Ethics Counsel served on the membership and program committees of the National Organization of Bar Counsel.

**MISSOURI BAR  
COMPLAINT RESOLUTION PROGRAM  
ACTIVITY REPORT**

	<b>2005</b>
Total Open Cases in 2005	93
New Cases referred from OCDC	73
Meetings Scheduled/Held	30
Agreements Reached*	22
Agreements Not Reached	5
Complainant Did Not Wish to Reconvene Mtg.	1
Pending Conference Report	2
Scheduling Conference	12
Cases Closed	55
Pending Closing	3
Complainant Did Not Respond or Consent	12
Complainant Did Not Wish to Use Services of Program	3
Respondent Did Not Consent or Respond	2
Parties Resolved without Conference*	13
Pending Receipt of Consent Forms	17
Total Resolutions*	35

**MISSOURI BAR  
COMPLAINT RESOLUTION PROGRAM**

<b>NATURE OF COMPLAINT</b>	<b>NO.</b>
Attorney v Attorney	2
Client Communication	34
Client's Directive	19
Diligence	2
Fees	7
Improper Withdrawal	2
Other	6
Rude Behavior	1

<b>TYPE OF MATTER</b>	<b>NO.</b>
Attorney v Attorney	2
Bankruptcy	3
Collections	1
Criminal Law	1
Domestic	19
Estate/Probate	8
Guardianship	5
Landlord/Tenant	1
Litigation	4
Other	9
Personal Injury	7
Real Estate	2
Real Property	2
Traffic	1
Unemployment Benefits	1
Workers' Comp	7

**MISSOURI BAR  
COMPLAINT RESOLUTION PROGRAM**

<b>LOCATION OF ATTY.</b>	<b>NO.</b>	<b>LOCATION OF ATTY.</b>	<b>NO.</b>
Cape Girardeau	2	Liberty	1
Carrollton	1	Neosho	2
Clayton	3	Poplar Bluff	3
Clinton	1	Rolla	1
Columbia	2	Sikeston	2
Festus	1	Springfield	5
Grandview	1	St. Charles	1
Hannibal	2	St. Joseph	2
Harrisonville	1	St. Louis	10
Hillsboro	1	St. Peters	2
Jefferson City	4	Steelville	1
Joplin	3	Town & Country	2
Kansas City	8	Tuscumbia	1
Kearney	1	Warson Woods	1
Kimberling City	1	Washington	2
Lebanon	2	Out State	3